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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1983

JOSEPH LONEWOLF,

Appellant,

v.

THERESA REY LONEWOLF,

Appellee

ON APPEAL

FROM THE SUPREME COURT

OF THE STATE OF NEW MEXICO

JURISDICTIONAL STATEMENT

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March 17, 1983

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1983

JOSEPH LONEWOLF,

Appellant,

v.

THERESA REY LONEWOLF,

Appellee.

ON APPEAL

FROM THE SUPREME COURT

OF THE STATE OF NEW MEXICO

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

1. Whether New Mexico State Courts have jurisdiction to distribute personal property pursuant to a divorce action when the personal property was created during the marriage by a Santa Clara Pueblo Indian member and possessed by he and his non-Indian wife domiciles of the Santa Clara Pueblo Indian Reservation.

2. Whether New Mexico's application of its community property laws to determine the character and nature of Santa Clara Pueblo created and possessed personal property is repugnant to the Constitution and laws of the United States because it impermissibly infringes upon the authority and right of the Santa Clara Pueblo Indians to make their own laws and be governed by them.

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OPINION BELOW

The opinion of the New Mexico Supreme Court of the State of New Mexico affirming the judgment for Appellee in the trial Court is reported at 22 N.M. St. Bar Bull. 47, December 22, 1982, Appendix A.

JURISDICTION

This is a civil action contesting the application of the community property laws of the State of New Mexico to personal property created during their marriage and possessed on the Santa Clara Pueblo by the member and his non-Indian wife. The New Mexico District Court for the First Judicial District, County of Rio Arriba distributed the personal property pursuant to a state court divorce proceeding brought by the non-Indian wife domiciled on the Santa Clara Pueblo. The major claim presented throughout is that New Mexico State Court action is preempted by federal policies, laws, and various U.S. Constitutional provisions. The trial court rendered a decision and judgment finding it had jurisdiction to divide the personal property created and possessed on the Santa Clara Pueblo. The trial court determined it did not have jurisdiction over real property within the Santa Clara Pueblo. Append

The parties entered into a stipulation after the trial court's determination of jurisdiction.

The Supreme Court of the State of New Mexico rendered its decision on December 22, 1982 affirming the trial court and issued its Mandate on January 6, 1983. Appendix B

Appellant filed his Notice of Appeal to the United States Supreme Court in the Supreme Court of New Mexico and the District Court for the First Judicial District, County of Rio Arriba, Appendix C on March 17, 1983

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2)[1/]

1/ Appellant relies upon cases reviewed by this Court on Appeal in this appeal. Warren Trading Post, Co., v. Arizona Tax Comm'n., 380 U.S. 685, 14 L.Ed. 2d 165, 85 S. Ct. 1242 (1965), McClanahan v. Arizona State Tax Comm'n., 411 U.S. 164, 36 L.Ed.2d 129, 93 S. Ct. 1257 (1973). In the event the Court determines it does not have appellate jurisdiction, Appellant prays that the Court treat this Jurisdictional Statement as a Petition for Writ of Certiorari pursuant to 28 U.S.C. §1257(3) and 28 U.S.C. §2103. The importance of the issues here in terms of Indian self-government are compelling enough to justify the exercise of this Court's discretionary certiorari jurisdiction as was done in other Indian jurisdiction cases presenting different problems, e.g. Williams v. Lee, 358 U.S. 217 3 L.Ed.2d 251, 79 S. Ct. 269 (1959), Santa Clara Pueblo v. Martinez, 436 U.S. 49, 98 S. Ct. 1670 (1978), Kennerly v. District Court, 400 U.S. 423, 91 S. Ct. 480 (1971) and, Fisher v. District Court, 424 U.S. 382, 96 S. Ct. 943 (1976).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article I, § 8, Clause 3; Article VI, Clause 2:

The Congress shall have Power...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

This Constitution and the Laws of the United States which shall be made under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Law of any State to the contrary notwithstanding.

STATUTES INVOLVED

1. The relevant portions of the New Mexico Domestic Affairs laws, Property Rights, 40-3-1 et seq., N.M.S.A. 1978, and Dissolution of Marriage, 40-4-1 et seq., N.M.S.A. 1978, are reproduced in Appendix K.
2. The Act of August 15, 1953, c.505, 67 Stat. 588, 589 and amended by Sec. 2 of the Act of August 24, 1954, c. 910, 68 Stat. 795, 28 U.S.C. §1360 is reproduced in Appendix L.
3. Section 6 and 7 of the Act of August 15, 1953, C.505, 67 Stat. 588, 590, 18 U.S.C. §1162 is reproduced in Appendix M.
4. The relevant portions of P.L. 90-284, 82 Stat. 79, 25 U.S.C. §§1321-26 are reproduced in Appendix N.

STATEMENT OF THE CASE

Appellant, Joseph Lonewolf, is a member of the Santa Clara Pueblo. Appellee, Theresa Rey Lonewolf, is a non-Indian. At the time Appellee initiated legal separation proceedings in the New Mexico District Court she and Appellant had been married for 28 years and had been domiciled on the Santa Clara Pueblo since 1972.

The Appellant resisted the jurisdiction of the District Court to distribute real and personal property located on the Santa Clara Pueblo throughout the course of the state court proceedings.

The District Court found it had jurisdiction over personal property located on the Santa Clara Pueblo. Appellant appealed to the New Mexico Supreme Court which has affirmed the findings of the District Court.

HOW THE FEDERAL QUESTIONS WERE PRESENTED

In Joseph Lonewolf's Response to Show Cause Order he resisted the assertion of the First Judicial District Court's jurisdiction over real and personal property located on Santa Clara Pueblo, Appendix J.

The New Mexico Court, however, found it had jurisdiction over real and personal property located on Santa Clara Pueblo and issued an Order Pendente Lite,

Mr. Lonewolf then Answered and Counterclaimed Appendix k. In his Answer he continued to resist the jurisdiction of the State Court over the real and personal property located on Santa Clara Pueblo. In his Counterclaim Mr. Lonewolf, recognizing the possibility of the State Court to grant a bare dissolution to Mrs. Lonewolf because of her status as a non-Indian, agreed to and prayed for a dissolution. Mr. Lonewolf continued his resistance to state court jurisdiction over real and personal property created and located on Santa Clara Pueblo in his Counterclaim and

prayed for a determination that the jurisdiction of the Santa Clara Tribal Court was proper over all Matters pertaining to real and personal property.

The New Mexico Court granted a dissolution and retained jurisdiction over property for further proceedings. Appendix E & F.

After briefing and argument the District Court found that it had jurisdiction over the personal property of the Lonewolf marriage and that New Mexico community property law applied to the reservation personal property, Appendix D.

Mr. Lonewolf, under compulsion of the State Court's finding of jurisdiction entered into a stipulation regarding the distribution of the personal property.

Mr. Lonewolf appealed to the Supreme Court of New Mexico contesting the State District Court's assertion of jurisdiction over personal property located on Santa Clara Pueblo, Appendix H.

The New Mexico Supreme Court affirmed the rulings of the District Court, Appendix A.

THE QUESTIONS ARE SUBSTANTIAL

1. The New Mexico Supreme Court decision conflicts with decisions of this court and two hundred years of federal Indian legal history preserving the rights of Indian Tribes to exclusive jurisdiction over the domestic relationships of their membership.

In Lonewolf v. Lonewolf the New Mexico courts found they had unobstructed jurisdiction over marital property of an Indian family (Mr. Lonewolf and all the children of the family are enrolled members of the Santa Clara Tribe) located on an Indian Reservation. In addition, the New Mexico courts applied New Mexico State Community Property Laws in distributing this reservation property.

In matters of family and domestic relations this Court has long held the tribes to have exclusive jurisdiction over on reservation matters. Fisher v. District Court, 424 U.S. 382 (1976); United States v. Quiver, 241 U.S. 602 (1916); Carney v. Chapman, 247 U.S. 102 (1918).

Other federal courts have also so held, Conroy v. Conroy, 575 F2d 175 (8th Cir., 1978); Hallowell v. Commons, 210 F. 783 (8th Cir., 1914) aff'd 239 U.S. 506 (1916); Yakima Joe v. To-is-lap, 191 F.516 (D. Or. 1910).

The executive branch of the federal

government has also found that tribal governments exercise exclusive jurisdiction over the Indian family when that family is located on the reservation. Powers of Indian Tribes, 55 I.D. 14, Oct. 25, 1934, 1 Opinions of the Solicitor, Department of the Interior, 445.

2. The decision of the New Mexico Supreme Court totally misinterprets and violates the Indian jurisdiction test as set out in the landmark decision of this Court, William v. Lee, 358 U.S. 217 (1959).

The Williams test involves two issues. First, whether any federal law controls the matter in question. This Court has recognized that P.L. 83-280, 18 U.S.C. §1162, 25 U.S.C. §§132-1326, 28 U.S.C. 1360 in matters of Indian jurisdiction is just such a law. McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973), Kennerly v. District Court, 400 U.S. 423 (1971) New Mexico has never acted to take jurisdiction over Indians within their reservation pursuant to the provisions of Public Law 280. Chino v. Chino, 90 N.M. 203, 561 P.2d 476 (1977).

Second, the test requires that the reviewing court determine whether or not the assertion of state court jurisdiction would infringe on tribal self-government. Here, the Supreme Court of New Mexico decided, without even a bow in the direction of such analysis, that the

actions of the state court in taking jurisdiction over an Indian marriage did not interfere with tribal self-government. One cannot imagine an issue more central to the self-government and determination of a separate people than jurisdiction over the family and marital relationship. Nofire v. United States, 164 U.S. 657 (1897); Fisher v. District Court, supra; United States v. Quiver, Conroy v. Conroy, supra; Relations of Pueblos to Their Members, The Federal Government, The State, and Others, M-29566 August 9, 1939, I Opinions of the Department of Interior 913.

In addition, this case involves an issue which directly parallels that which arose in Williams v. Lee, supra. In Williams this court dealt with a debt contracted by an Indian with a non-Indian on a reservation. Here again a non-Indian, Mrs. Lonewolf, is suing an Indian, Mr. Lonewolf, in state court for an alleged debt, i.e., a portion of the marital property, that was contracted on the reservation and arose out of the marital relationship.

3. A reversal of the New Mexico Supreme Court decision would protect the authority of the Santa Clara Tribal Court and carry out the federal policy of Indian self-government, Williams v. Lee, supra.

If the New Mexico Courts are allowed to ignore

the jurisdiction of the tribal court in this matter, the authority of all tribal courts in New Mexico will be summarily undermined. This Court has stated clearly that consideration of national legislative and judicial policy requires the protection of the Indian tribal courts from assertions of non-Indian court jurisdiction which would undermine their authority, Santa Clara Pueblo v. Martinez, 436 U.S. 49 at 59 and 64 (1978), Kennerly v. District Court, supra. That is precisely what has happened in this case.

The property over which the state court has here asserted jurisdiction was created by an Indian on Santa Clara Pueblo and located on Santa Clara Pueblo. The marriage to which this property belonged existed on Santa Clara Pueblo.

The question of whether the Tribal Court of Santa Clara Pueblo has jurisdiction over this marriage and over the person of Mrs. Lonewolf, a non-Indian, was answered by the decisions in Santa Clara Pueblo, supra, at 65, and United States v. Montana, 400 U.S. 544 at 565 (1981). In Montana this Court found that the tribal courts had jurisdiction over non-Indians when they entered into consensual relationships with Indians on the reservation. The marriage of Mrs. Lonewolf to Mr. Lonewolf; the place of their domicile for many years on Santa Clara Pueblo; and, the enrollment of their children into the tribe

can only be said to be consensual.

4. Claims that the government of the Pueblo somehow consented to state jurisdiction in this matter conflict with this Court's holding in Kennerly v. District Court of Montana, supra.

On appeal, Mrs. Lonewolf claimed that statements made at a hearing in this case by the Governor of the Pueblo of Santa Clara indicated that the Pueblo had granted jurisdiction to the State in domestic matters. These statements by the Governor are subject to several interpretations. It is clear, however, that whatever the Governor said, his statements are totally insufficient to transfer jurisdiction from the Pueblo to the State of New Mexico. In Kennerly, supra, this court found that there is only one way, under the present state of Federal Law for jurisdiction to be transfered between Indian and State governments. The provisions of P.L. 83-280, now 25 U.S.C. §§1321-26, must be strictly followed. The decision below must therefore be reversed.

CONCLUSION

For these reasons the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution, or summary

reversal.

Respectfully submitted:

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APPENDICES

APPENDIX "A"

IN THE SUPREME COURT OF
THE STATE OF NEW MEXICO

THERESA REY LONEWOLF,

Petitioner-Appellee,

v. No. 14334

JOSEPH LONEWOLF,

Respondent-Appellant.

SUPREME COURT OF NEW MEXICO
F I L E D Dec. 22 1982
/s/ Rose Marie Alderete Clerk

APPEAL FROM THE DISTRICT COURT
OF RIO ARRIBA COUNTY

MONTOYA, Judge

JAMES C. THOMPSON
Espanola, New Mexico

SARAH M. SINGLETON Attorney for
Santa Fe, New Mexico Appellee

WALTER R. KEGEL
KEGEL, MONTEZ & PIATT
Santa Fe, New Mexico Attorney for
Appellant

OPINION

STOWERS, Justice.

This appeal arises out of the proceedings that accompanied the dissolution of the marriage of Joseph Lonewolf (Appellant) and Theresa Rey Lonewolf (Appellee). Mr. Lonewolf is an Indian and a member of the Pueblo of Santa Clara. Mrs. Lonewolf is a non-Indian.

The parties stipulated to the division of most of their community property. However, the stipulation did not resolve the disposition of fifty-eight pieces of existing, but missing Indian pottery. After a hearing the district court entered findings of fact and conclusions of law concerning the disposition of the pottery, and Mr. Lonewolf appeals. We affirm.

The issue on appeal is whether the New Mexico district court had jurisdiction to determine the disposition of community personal property located on the Santa Clara reservation when one of the parties is an enrolled member of the Pueblo of Santa Clara.

The facts are as follows. After Mrs. Lonewolf filed a petition for legal separation, Mr. Lonewolf answered and counterclaimed for divorce. Mr. Lonewolf's answer raised questions as to the jurisdiction of the district court. At issue were

the community interest in real estate and improvements to real estate located within the Santa Clara reservation, community personal property located on and off the reservation, and community debts. The district court entered a partial decree dissolving the marriage and retaining jurisdiction on all other issues. Subsequently, the court held an evidentiary hearing on the issue of jurisdiction. After the hearing the court found that although it lacked jurisdiction over the real property questions, it had jurisdiction over the personal property of the parties. The parties then entered into a lengthy property stipulation. Because the value and distribution of the pottery was not included in the stipulation, the court held a hearing on that issue. After hearing testimony by Mr. Lonewolf and Gregory Lonewolf, the parties' son, the court found the pottery to be community property and that the total community interest in the pottery was $56,618. The court ascertained deductions and credits, and found that Mr. Lonewolf owed Mrs. Lonewolf $18,309. Mr. Lonewolf asserts that the district court was without jurisdiction to make such a finding.

The test for exercise of state court jurisdiction over matters involving Indians and Indian tribes is set forth in WILLIAMS v. LEE, 358 U.S. 217 (1959). In Williams the United States Supreme

framed the question as being "whether the state infringed on the right of reservation Indians to make their own laws and be ruled by them." ID. at 220. In discussing the proper exercise of state jurisdiction, this Court has stated:

> These [previous United States Supreme Court] decisions indicate that even on reservations state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a right granted or reserved by federal law.

MONTOYA v. BOLACK, 70 N.M. 196, 204-05, 372 P.2d 387, 393 (1962) (quoting VILLAGE OF KAKE v. EGAN, 369 U.S. 60, 75 (1962)).

This Court frequently has noted jurisdictional questions unique to case involving Indians. SEE, E.G., STATE SECURITIES, INC. v ANDERSON, 84 N.M. 629, 506 P.2d 786 (1973); TENORIO v. TENORIO, 44 N.M. 89, 98 P.2d 838 (1940). In CHINO v. CHINO, 90 N.M. 203, 206, 561 P.2d 476, 479 (1977), we recognized certain criteria for determining whether the application of state law would infringe upon Indian self-government: "(1) whether the parties are Indians or non-Indians, (2) whether the cause of action arose within the Indian reservation, and (3) what is the nature of the interest to be protected." SEE ALSO MARTLEY v. BACA, 97 N.M. 441, 640 P.2d 941 (Ct. App. 1981).

Mr. Lonewolf urges that the elements of infringement as set forth in CHINO mandate a reversal of the district court on the basis of jurisdiction. Based on the facts of this case, however, we do not find the decision of the district court contrary to the test set forth in CHINO. We further fail to find that the jurisdiction maintained by the court in this case infringe upon Indian self-government, which is the threshold determination in assessing the applicability of state law to reservation Indians. SEE NATEWA v. NATEWA, 84 N.M. 69, 499 P.2d 691 (1972). The district court properly determined it lacked jurisdiction to decide the issues involving real property. SEE KENNERLY v. DISTRICT COURT OF MONTANA, 400 U.S. 423 (1971). Rights to the personal property, however, were not tied to lands within the reservation. Mrs. Lonewolf had the power to control and dispose of the community property, Section 40-3-14, N.M.S.A. 1978, and this right as concerned personal property traveled with her; it was not attached to tribal land. Mrs. Lonewolf properly invoked the jurisdiction of the district court for dissolution of the marriage, Section 40-4-5, N.M.S.A. 1978, and for division of the property, Section 40-4-7, N.M.S.A. 1978. Once the district court had jurisdiction to dissolve the marriage, it had jurisdiction to determine proper distribution of

the parties' community personal property. CF. POWELL v. FARRIS, 94 Wash. 2d 782, 620 P.2d 525 (1980) (state court had jurisdiction over an action for dissolution of partnership between an Indian and non-Indian and for an accounting of proceeds from a business located on tribal land).

Mr. Lonewolf submitted to the jurisdiction of the district court, both when he filed his counterclaim in that court and when he entered a stipulation regarding various items of community personal property. Because he submitted to the district court's jurisdiction, he cannot now deny jurisdiction specificially as to the pottery. CF. TENORIO v. TENORIO, SUPRA at 103, 98 P.2d at 847 (stating that "in bringing a suit in a state court an Indian is subject to the same laws relating to the prosecution of suits which govern any citizen of the state"). As this Court stated in NATEWA v. NATEWA, SUPRA at 71, 499 P.2d at 693. "[a]ppellant cannot interpose his special status as an Indian as a shield to protect him from obligations that result from his marriage to appellee which had been entered inot off the reservation." Although the nature of the present case is different from NATEWA, the principle is the same SEE STATE SECURITIES, INC. v. ANDERSON, SUPRA.

We find that the district court properly exercised jurisdiction, and we affirm the judgment. Fifteen hundred dollars will be awarded to

Mrs. Longwolf for attorneys' fees on appeal.

IT IS SO ORDERED.

/s/ STOWERS, Justice

WE CONCUR:

/s/ PAYNE, C.J.

/s/ RIORDAN, J.

APPENDIX "B"

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
MANDATE No. 14,334

THE STATE OF NEW MEXICO TO THE DISTIRCT COURT sitting within and for the County of Rio Arriba, GREETING:

WHEREAS, in a certain cause lately pending before you, number RA 79-150(C) on your Civil Docket, wherein Theresa Rey Lonewolf was Petitioner and Joseph Lonewolf was Respondent, by your consideration in that behalf judgment was entered against said Respondent; and

WHEREAS, said cause and judgment were afterwards brought into our Supreme Court for review by Respondent by appeal, whereupon such proceedings were had that on December 22, 1982, an Opinion was handed down by said Supreme Court and Judgment was entered affirming your judgment aforesaid, and remanding said cause to you.

NOW, THEREFORE, this cause is hereby remanded to you for such further proceedings therein as may be proper, if any, consistent and in conformity with said Opinion and said Judgment. Petitioner, Theresa Rey Lonewolf is hereby awarded the sum of $1,500.00 attorney fees on appeal.

/s/
Rose Marie Alderete
Clerk of the Supreme Court of the State of New Mexico

WITNESS, the Hon. H. Payne, Chief Justice of the Supreme Court of the State of New Mexico and seal of said Court this 6th day of January, 1983.

APPENDIX "C"

IN THE SUPREME COURT OF
THE STATE OF NEW MEXICO

JOSEPH LONEWOLF,
Respondent-Appellant

v. No. 14334

THERESA REY LONEWOLF,
Petitioner-Appellee

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Joseph Lonewolf, Respondent-Appellant in the above-styled cause, appeals to the Supreme Court of the United States from the order of the Supreme Court of the State of New Mexico entered December 22, 1982, affirming the judgment of the District Court, First Judicial District, County of Rio Arriba, State of New Mexico, and the Supreme Court having issued its mandate marking its decision as final on January 6, 1983.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

Respectfully submitted:

INDIAN PUEBLO LEGAL
SERVICES, INC.

By /s/

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Counsel for Appellant

CERTIFICATE OF SERVICE

1. The undersigned, hereby certify that on March 16, 1983, I filed and served notice of Appeal to the Supreme Court of the United States in the above-matter upon all parties required to be served by depositing true copies thereof in the United States mail, first class postage prepaid addressed to:

Mr. James C. Thompson
P.O. Box JJ
Espanola, New Mexico 87532

Ms. Sarah M. Singleton
P.O. Box 2423
Santa Fe, New Mexico 87504-2423

and that I filed a true copy of the above Notice of Appeal and Proof of Service in the District Court, County of Rio Arriba, State of New Mexico, on the same date.

By /s/
Anthony F. Little
Attorney for Respondent-Appellant

APPENDIX "D"

STATE OF NEW MEXICO COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

THERESA REY LONEWOLF,

Petitioner

vs. NO. RA 79-150(C)

JOSEPH LONEWOLF,

Respondent.

COURTS FINDINGS OF FACT

1. That this court has heretofore entered its decree, dissolving the marriage between the parties on December 13, 1979 and by the terms of its order retained jurisdiction over all remaining issues including the disposition of the property of the parties.

2. At the time of separation and for several years prior thereto, the parties occupied a dwelling located on property owned by the Santa Clara Indian Pueblo, which property was leased to the All Indian Housing Authority and Occupied under an agreement between the Housing Authority and Joseph Lonewolf, who is a duly enrolled member of Santa Clara Indian Pueblo.

3. Theresa Lonewolf is non-Indian and as such can have no rights in and to land located upon the Santa Clara Indian Pueblo.

4. That lands upon the Santa Clara Indian Reservation belong to the Santa Clara Indian Pueblo and are not subject to sale or alienation by anybody who occupies them and that the same can be passed on only to other members of the

Santa Clara Indian Tribe, subject to such rules and regulations as to the Tribal Council of the Pueblo may provide.

5. That regardless of whether the funds used to pay rentals under the occupancy agreement with the All Indian Housing Authority and funds used to build other improvements on the premises were community property or not at the time they were so expended, both parties knew or should have know that in making such payment and in improving such property each of the parties had only such rights as were given by the Santa Clara Indian Pueblo.

6. That during the course of the trial, the parties entered into a stipulation wherein they divided for the most part the community property acquired by the parties during the marriage, excepting the real estate located on Indian land referred to in Finding No. 2 above; that the stipulation also determined the ownership of sep rate property belonging to the parties, and also the amount of the community debts and provisions made for the payment of said debts. Said stipulation did not resolve the disposition of some 58 pieces of Indian pottery allegedly existing at the time of the separation of the parties and before the decree of divorce was entered. Testimony was presented to the Court regarding said pottery, but the Court was requested by the parties to withhold ruling on

that issue until the respondent and his son, Gregory Lonewolf a witness had undergone polygraph testing concerning their testimony and knowledge regarding the pottery. The parties agreed to make arrangements for such testing and to make the results of said tests available to the Court.

7. Another unresolved issue between the parties was the claimed community interest by the petitioner in certain sculptures known as "Turkey Girl" allegedly made by respondent and his Father, it being claimed and testified to, that the respondent had expended both time and money in the making and completing the sculptures. The Court, in view of the testimony presented finds that the sculptures in question were the work of the respondent's father and that no interest of any kind accrued to the community from said sculpture.

8. The Court approves the stipulation of the parties regarding the property mentioned therein, the disposition of the community debts are being in all repects, fair and reasonable.

9. That this Court had previously entered its order in this Cause, wherein it declared that it had no jurisdiction over the Santa Clara reservation said order being entered on June 6, 1980.

10. Evidence was submitted by petitioner in

support of her claim for an aware of attorney's fees and cost incurred. The Court finds that the claimed attorney's fees and costs in the sum of 15,865.20 are reasonable and should be paid to petitioner by the respondent in view of the protracted litigation, discovery and numerous hearings involved in resolving the issues in dispute between the parties.

CONCLUSIONS OF LAW

1. The Court has no jurisdiction over real estate and improvements thereon located within Santa Clara Indian Reservation.

2. If Petitioner has any claim upon the value of the land or improvements of the parties or of Respondent located upon the Santa Clara Indian Pueblo, such claim will have to be resolved in the Santa Clara Tribal Court.

3. That attorney's fees and costs incurred herein in the amount of $15,865.20 be assesed against the respondent.

4. That a prtial final decree or order be entered in accordance with the forgoing findings and conclusions.

/s/
SAMUEL Z. MONTOYA
District Judge Pro-tem

APPENDIX "D"

STATE OF NEW MEXICO COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

THERESA REY LONEWOLF,

Petitioner,

vs. No. RA 79-150

JOSEPH LONEWOLF,

Respondent.

ORDER

THIS MATTER coming on to be heard upon the objections to jurisdiction raised by the Respondent, Joseph Lonewolf, and the Court having held a hearing thereon, and being now fully advised in the premises,

FINDS:

1. That Joseph Lonewolf is a member of the Santa Clara Indian Pueblo, a duly recognized Tribe under the Indian Reorganization Act of 1935.

2. Theresa Lonewolf is a non-Indian.

3. The parties have a residence on Santa Clara Pueblo land which has been alloted to Joseph Lonewolf by reason of his being a member of the Santa Clara Indian Pueblo, and upon which payments have been made from funds which are community funds.

4. The parties have personal property both on and off of the Santa Clara Indian Reservation.

5. The father of Joseph Lonewolf has made claim to certain of the personal property which is

on the Indian Reservation and has filed a case in Tribal Court against Joseph Lonewolf, but that Court has no jurisdiction and has not served Theresa Lonewolf.

FROM THE FOREGOING FINDINGS, THE COURT CONCLUDES AS MATTERS OF LAW:

1. That it has no jurisdiction over any lands located upon the Santa Clara Reservation, or over any real estate located thereon;

2. That the Court does have jurisdiction over the personal property which is the community property of the parties, whether the same is located on or off the Reservation;

3. Camilio Tafoya, the purported owner of certain of the personal property, may intervene in this cause and have his rights determined therein, but is not obligated to do so and shall not be bound by any decree of this Court if he does not intervene.

DONE at Santa Fe, New Mexico.

/s/
Samuel Z. Montoya, Justice
of the Supreme Court, Retired,
Sitting as District Judge
of Division IV, First
Judicial District

APPENDIX "F"

STATE OF NEW MEXICO COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

THERESA REY LONEWOLF,

Petitioner

-vs- No. RA 79-150(C)

JOSEPH LONEWOLF,

Respondent.

SECOND PARTIAL FINAL DECREE

THIS CAUSE HAVING come on for final hearing by the Court, the Petitioner, Theresa Rey Lonewolf, being present and represented by her attorney, James C. Thompson, and the Respondent, Joseph Lonewolf, being present and represented by his attorney, Walter R. Kegel, and the Court having considered the testimony and all matters of record herein, and having heard argument of counsel, and being otherwise fully advised in the premises, it is:

ORDERED, ADJUDGED AND DECREED THAT:

1. The Stipulation, which is incorporated herein by reference, concerning the distribution of the community and separate property of the parties, be and the same hereby is approved, and the parties are hereby ordered to fully comply with the terms and provisions thereof.

2. The Respondent, Joseph Lonewolf, is hereby ordered to pay to the Petitioner, Theresa Rey Lonewolf, her attorney fees and costs incurred in this cause in the total sum of $15,865.20.

3. The Court reserves jurisdiction of the remaining issue concerning the ownership and disposition of the missing pots.

4. The Court determines it is without jurisdiction to consider the interest of the parties in and to improvements to real estate upon the Santa Clara Indian Reservation.

/s/
SAMUEL Z. MONTOYA
DISTRICT JUDGE, PRO-TEM

SUBMITTED BY:

/s/
JAMES C. THOMPSON
Attorney for Petitioner
P.O. Box Drawer JJ
Espanola, NM 87532

KEGEL, McCABE and MONTEZ
A Professional Corporation

By: /s/
Attorneys for Respondent
P.O. Box 2292
Santa Fe, NM 87501

APPENDIX "G"

STATE OF NEW MEXICO COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

THERESA REY LONEWOLF,

Petitioner,

vs. No. RA 79-150(C)

JOSEPH LONEWOLF,

Respondent.

STATEMENT OF ISSUES

The Appellant intends to argue that the trial Court was without jurisdiction to determine issues relating to the ownership and division of property located on the Santa Clara Indian Reservation at the time of the filing of the Petition for Dissolution of Marriage, where the Appellant was a member of the Santa Clara Indian Tribe, and in refusing Appellant's Requested Findings of Fact and Conclusions of Law and denying Appellant's Motions to that effect.

KEGEL, MONTEZ and PIATT
A Professional Corporation

By

/s/
W. R. Kegel
Attorneys for Petitioner-Appellant
P.O. Box 2292
Santa Fe, New Mexico 87504-2292
Telephone: (505) 982-4461

APPENDIX "H"

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO, COUNTY OF RIO ARRIBA

THERESA REY LONEWOLF,

Petitioner,

vs. No. R.A. 79-150

JOSEPH LONEWOLF,

Respondent.

PETITION FOR LEGAL SEPARATION

COMES NOW the Petitioner, Theresa Rey Lonewolf, and for her cause of action for a Legal Separation against the Respondent, Joseph Lonewolf, states and alleges as follows:

1. Petitioner and respondent are bona fide residents of Rio Arriba County, New Mexico and have their domicile in the State of New Mexico.

2. The parties hereto were united in the bonds of matrimony on October 20, 1951 in the State of New Mexico; that the parties permanently separated on or about February 11, 1979 and have not lived or cohabited together since said date of permanent separation.

3. At the present time and for some time past, it has become apparent that the etitioner and respondent are of inherently different natures and dispositions and it is impossible for the parties hereto to continue to live together in a normal marital relationship, and a state of incompatibility presently exists between the

parties, as a result of which the parties are permanently separated and are no longer residing or living together as husband and wife.

4. That three children have been born to petitioner and respondent as a result of the marriage relationship, namely, GREGORY LONEWOLF, ROSEMARY SPECKLED ROCK, and SUSAN ROMERO, all of whom are emancipated and over the age of 21 years.

5. That the parties have acquired certain community property, including collections of valuable pots, paintings and other art objects, and the details of such collections and of other items of community property will be provided by the petitioner as soon as possible.

6. That the petitioner herein is aware of a community debt owing to the Valley National Bank of Espanola, New Mexico in the sum of $16,000.00, plus accrued interest, on promissory notes owing to said Bank.

7. That petitioner is presently without means of her own, has no separate property, is unable to work and provide for her livelihood at the present time and has not worked since prior to her marriage in 1951; that the respondent is an able-bodied man and has an income of approximately $150,000.00 per year, and upon final hearing of this cause respondent should be ordered to contribute a reasonable amount of money monthly or semi-monthly unto the petitioner as alimony

for her support and maintenance.

8. That the parties have a dwelling house situated at Santa Clara Pueblo in Rio Arriba County, New Mexico and petitioner is in dire need of said premises as a dwelling place for herself pending final hearing in this cause, and the respondent should be ordered forthwith to vacate said premises until final determination of this cause as the petitioner is financially unable to reside elsewhere.

9. That respondent pay to petitioner as alimony a reasonable sum for a reasonable period of time, as to the Court may seem just and proper.

10. That the parties have two vehicles and petitioner is in need of one of said vehicles; that the petitioner presently has the possession and use of a 1975 Ford Courier Pick-up truck, which she needs to retain for her personal use until final hearing in this cause.

11. Petitioner has been required to retain an attorney in connection with this cause and has incurred costs relative to this cause.

12. That because respondent has in his exclusive possession and control some of the property belonging to the estate of petitioner and respondent, petitioner fears that respondent will dispose of, encumber, or otherwise dissipate the same unless restrained and enjoined by this Court from so doing.

WHEREFORE, petitioner prays as follows:

1. That a Decree issue out of this Court ordering that the parties hereto live separately and apart from one another, and that respondent be forever restrained from molesting petitioner.

2. That the Court issue a temporary restraining Order, restraining respondent from secreting, encumbering, selling, or otherwise disposing of the community property of petitioner and respondent.

3. That respondent be notified to show cause, if any he may have, why the petitioner should not have the use and possession of the dwelling home of the parties and the use and possession of the 1975 Ford Courier vehicle, and why the temporary restraining order restraining respondent from disposing of any items of community property should not be made permanent until the final hearing in this cause.

4. That respondent be required to reimburse petitioner her attorney fees plus all costs of this suit.

5. That petitioner have such other and further relief as she may be entitled to in law and in equity, including an equitable division of community property.

/s/
JAMES C. THOMPSON
Attorney for Petitioner
P.O. Drawer JJ
Espanola, New Mexico 87532

VERIFICATION

STATE OF NEW MEXICO)
) ss:
COUNTY OF RIO ARRIBA)

Theresa Rey Lonewolf, being first duly sworn, upon her oath deposes and states that she is the Petitioner in the foregoing Petition for Legal Separation, that she has read and understands the contents of the foregoing and that all matters therein alleged are true and correct, except such as are made upon information and belief, and as to those, she believes them to be true.

/s/
THERESA REY LONEWOLF

SUBSCRIBED AND SWORN to before me this 26th day of March, 1979.

My Commission Expires:
June 3, 1980

/s/
Notary Public

APPENDIX "I"

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO, COUNTY OF RIO ARRIBA

THERESA REY LONEWOLF,

Petitioner,

vs. No. RA 79-150

JOSEPH LONEWOLF,

Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

1. The Order, and the Petitioner upon which it is based, does not comply with the provisions of Rules 65 and 66 of the Rules of Civil Procedure.

2. Respondent is a member of the Santa Clara Pueblo and dwelling house referred to is located upon Indian land, and this Court has no jurisdiction over it.

3. As to the property of Respondent located upon Santa Clara Pueblo lands, the Court has no jurisdiction over same.

4. The Order makes no provision for Respondent to secure any of his personal property which is in the possession of Petitioner.

5. That each party should be required to furnish unto the other a list of property which is in his or her possession.

KEGEL AND McCULLOH,
P.A., P.O. Box 2292
Santa Fe, NM 87501
(505) 982-4461

By /s/

VERIFICATION

STATE OF NEW MEXICO)
) ss:
COUNTY OF SANTA FE)

Joseph Lonewolf, being first duly sworn upon his oath deposes and states that he is the Respondent in the foregoing cause of action, that he has read and understands the contents of the foregoing Response to Order to Show Cause, and that the statements therein made are true and correct, to be the best of his information and belief.

/s/
Joseph Lonewolf

SUBSCRIBED AND SWORN to before me this 2nd day of April, 1979.

/s/
Notary Public

My Commission Expires:
5-10-79

APPENDIX "J"

STATE OF NEW MEXICO COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

THERESA REY LONEWOLF,

Petitioner and Counter-Respondent,

vs. NO. RA 79-150

JOSEPH LONEWOLF,

Respondent and Counter-Claimant.

ANSWER AND COUNTERCLAIM

Respondent, for his Answer, states:

1. He admits the allegations of paragraphs 1, 2, 3 and 4 of the Petition.

2. He denies the allegations of paragraphs 7 and 9 of the Petition.

3. Answering paragraph 5 of the Petition, Respondent denies the same, and states that he is a duly enrolled member of the Pueblo of Santa Clara, a recognized Indian tribe, and that all items of property owned by either Respondent or the parties jointly are located on land of the Pueblo of Santa Clara Grant and are not subject to the jurisdiction of this Court.

4. Answering paragraph 6 of the Petition, Respondent admits the allegations thereof, but by way of further answer, states that there are other community debts besides the debt mentioned therein.

5. Answering paragraphs 8 and 12 of the Petition, Respondent states that the issues raised by same are most, since they relate to relief pendente lite, which has been agreed to by the parties.

6. Answering paragraph 10 of the Petition, Respondent denies the allegations thereof, and, by way of further answer, states that the request for relief pendente lite is moot by virtue of the agreement of the parties.

7. Answering paragraph 11 of the Petition, Respondent admits the same, but states that under the Equal Rights Amendment to the Constitution of the State of New Mexico, any statute which would require him to pay the attorney's fees of Petitioner is unconstitutional, since there is no corresponding obligation by statute on the part of a wife to pay attorney's fees of a husband.

8. By way of further answer, Respondent states that by virtue of his Counterclaim filed herewith, he desires to secure an absolute divorce from Petitioner, and that such relief takes precedence over the relief requested by Petitioner.

WHEREFORE, Respondent prays that the Petition be dismissed and for such other and further relief as to the Court may seem proper.

COUNTERCLAIM

COMES NOW the Respondent and Counterclaimant, Joseph Lonewolf, and for his cause of action against the Petitioner and Counter-respondent, states:

1. Respondent-Counterclaimant, Joseph Lonewolf, and Petitioner-Counter-respondent, Theresa Rey Lonewolf, are bona fida residents of Rio Arriba County, New Mexico, and have their domicile in said State of New Mexico.

2. The parties hereto were united in the bonds of matrimony on October 20, 1951 in the State of New Mexico; that the parties permanently separated on or about February 11, 1979, and have not lived or cohabited together since said date of permanent separation.

3. At the present time, and for some time past, it has become apparent that the parties are of inherently different natures and dispositions and it is impossible for them to continue to live together as husband and wife; that a state of irreconcilable incompatibility exists between the parties making it impossible to live together as husband and wife.

4. That three children have been born to the parties as a result of the marriage relationship, namely, Gregory Lonewolf, Rosemary Speckled Rock and Susan Romero, all of whom are emancipated and over the age of 21 years.

5. That Counterclaimant is an enrolled member of the Pueblo of Santa Clara, a recognized Indian tribe; that Counter-Respondent is non-Indian and this Court has jurisdiction to grant the parties a divorce by virtue of Counter-Respondent's residence.

6. That all property which the parties have which was acquired during the marital relationship is located within the Pueblo of Santa Clara Grant and is not subject to the jurisdiction of this Court, but rather to the jurisdiction of the Pueblo of Santa Clara.

7. The parties have acquired community debts, the extent and nature of which is known to Counter-Respondent and not to Counterclaimant, and should be disclosed by Counter-Respondent.

WHEREFORE, Counterclaimant prays as follows:

A. That he be granted a complete and absolute divorce from the Petitioner and Counter-Respondent on the grounds of incompatibility;

B. For a determination that the Tribal Court has jurisdiction over all matters pertaining to property;

C. For an equitable division of the community debts; and

D. For such other and further relief as to the Court may seem proper.

KEGEL and McCULLOH, P.A.

By

/s/

W. R. KEGEL

Attorneys for Respondent
and Counterclaimant
P.O. Box 2292
Santa Fe, New Mexico 87501
Telephone: (505) 982-4461

STATE OF NEW MEXICO)
: ss
COUNTY OF SANTA FE)

JOSEPH LONEWOLF, being first duly sworn on oath, deposes and states: That he is the Respondent and Counterclaimant in this cause; that he has read over, knows and understands the contents of the foregoing Answer and Counterclaim, and that the statements therein made are true of his own knowledge, except those made on information and belief, and as to those, he verily believes them to be true.

/s/
Joseph Lonewolf

SUBSCRIBED AND SWORN TO before me this 27th day of April,

/s/
Notary Public

My Commission Expires:
2/28/81

APPENDIX "K"

NEW MEXICO
DOMESTIC AFFAIRS
STATUTES

40-4-5. DISSOLUTION OF MARRIAGE: JURISDICTION: DOMICILE.

The district court has jurisdiction to decree a dissolution of marriage when at the time of filing the petition either party has resided in this state for at least six months immediately preceding the date of the filing and has a domicile in New Mexico. As used in this section, "domicile" means that the person to whom it applies:

A. is physically present in this state and has a place of residence in this state;

B. has a present intention in good faith to reside in this state permanently or indefinitely;

C. provided further, persons serving in any military branch of the United States government who have been continuously stationed in any military base or installation in New Mexico for such period of six months shall, for the purposes hereof, be deemed to have a domicile of the state and county where such military base or installation is located; and

D. provided further any person who had resided continuously in New Mexico for at least six months immediately prior to his or her

spouse's entry into any military branch of the United States government, who is stationed or whose spouse is stationed at any military base or installation outside of New Mexico and who has a present intention in good faith to return and to reside in this state permanently or indefinitely, shall for the purposes hereof, be deemed to have a domicile of the state and county of his residence immediately prior to his or his spouse's entry into the military branch.

40-4-7. PROCEEDINGS: ALIMONY: SUPPORT OF CHILDREN DIVISION OF PROPERTY.

A. In any proceeding for the dissolution of marriage, division of property, disposition of children or alimony, the court may make and enforce by attachment or otherwise an order to restrain the use of disposition of the property of either party, or for the control of the children or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper. The court may make an order, relative to the expenses of the proceedings, as will ensure either party an efficient preparation and presentation of his case.

B. On final hearing, the court:

(1) may allow either party such a reasonable portion of the spouse's separate property, or such a reasonable sum of money to be paid by either spouse, either in a single sum, or in installments, as alimony, as under the circumstances of the case may seem just and proper.

(2) may modify and change any order in respect to alimony allowed either spouse, whenever the circumstances render such change proper;

(3) may set apart out of the property of the respective parties, such portion thereof, for the maintenance and education of their minor children, as may seem just and proper; and

(4) may make such an order for the guardianship, care, custody, maintenance and education of the minor children, or with reference to the control of the property of the respective parties to the proceeding, or with reference to the control of the property decreed or fund created by the court for the maintenance and education of the minor children, as may seem just and proper.

C. The court may modify and change any order in respect to the guardianship, care,

custody, maintenance or education of the children, whenever circumstances render such change proper. The district court shall have exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children, and with reference to the property decreed or funds created for their maintenance and education so long as they, or any of them remain minors. If any of the property decreed or funds created for the maintenance and education of the children shall remain on hand and be undisposed of at the time the minor children reach the age of majority, the same may be disposed of by the court as it may deem just and proper.

40-3-14. MANAGEMENT AND CONTROL OF OTHER COMMUNITY PERSONAL PROPERTY.

A. Except as provided in Subsection B and C of this section, either spouse alone has full power to manage, control, dispose of and encumber the entire community personal property.

B. Where only one spouse is:

(1) named in a document evidencing ownership of community personal property; or

(2) named or designated in written agreement between that spouse and a third party as

sole authority to manage, control, dispose of or encumber the community personal property which is described in or which is the subject of the agreement, whether the agreement was executed prior to or after July 1, 1973; only the spouse so named may manage, control, dispose of or encumber the community personal property described in such a document evidencing ownership or in such a written agreement.

C. Where both spouses are:

(1) named in a document evidencing ownership of community personal property; or

(2) named or designated in a written agreement with a third party as having joint authority to dispose of or encumber the community personal property which is described in or the subject of the agreement, whether the agreement was executed prior to or after July 1, 1973; both spouses must join to dispose of or encumber such community personal property where the names of the spouses are joined by the word "and." Where the annes of the spouses are joined by the word "or," or by the words "and/or," either spouse alone may dispose of or encumber such community personal property.

APPENDIX "L"

SECTION 6 and 7 of the Act of August 15, 1953, C. 505, 67 Stat. 588,590, 18 U.S.C. §1162

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the area of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such state or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakat la Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State,

except the Red Lake Reservation.

Nebraska ------- All Indian country within the State.

Oregon -------- All Indian country within the State, except the Warm Springs Reservation.

Wisconsin ------ All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of an real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto, or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the area of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

APPENDIX "M"

The Act of August 15, 1953, C. 505,67 Stat. 588, 589 and amended by Sec. 2 of the Act of August 24, 1954, C. 910, 68 Stat. 795, 28 U.S.C. §1360.

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians were parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such state or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the

	Warm Springs Reservation.
Wisconsin ----------	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

APPENDIX "N"

The Relevant Portions of P.L. 90-284, 82 Stat. 79, 25 U.S.C. §§1321-26.

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made

pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

25 U.S.C.A. § 1322

(a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band,

or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

25 U.S.C.A. § 1323

(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of Section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior ot its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such

repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

25 U.S.C. § 1326

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

Office-Supreme Court, U.S.
F I L E D
APR 20 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-1564

JOSEPH LONEWOLF, Appellant,

v.

THERESA REY LONEWOLF, Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF NEW MEXICO

MOTION TO DISMISS OR AFFIRM

SARAH MICHAEL SINGLETON
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Santa Fe, New Mexico
87501
(505) 988-4469

Counsel for Appellee

April 18, 1983

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

The appellee moves to dismiss the appeal or to affirm the judgment of the Supreme Court of New Mexico because the appeal is not within the Court's appellate jurisdiction. Additionally, appellee moves to dismiss or affirm because the appeal does not present a substantial federal question which was properly raised and passed on below and because the appeal is from a decision which rests on an adequate state-law basis. All of appellee's grounds make the questions presented so insubstantial as not to need further argument.

I.

THE NATURE OF THE CASE

Mr. Lonewolf, a member of the Santa Clara Pueblo, and Mrs. Lonewolf, a non-Indian, married over 30 years ago pursuant to a license from the State of New Mexico and not pursuant to tribal law.

For twenty years they lived on non-Indian lands. In 1972 they moved to Santa Clara Pueblo. In 1979 Mrs. Lonewolf petitioned for legal separation in the New Mexico district court. After the separation Mrs. Lonewolf moved from the pueblo and resided in New Mexico.

Mr. Lonewolf answered the separation petition, and he counterclaimed for dissolution of marriage.

Mr. Lonewolf admitted the jurisdiction of the district court to grant the divorce but contested the jurisdiction of the district court to divide the couple's real and personal property. After hearings on the issue of jurisdiction, the district court agreed it had no jurisdiction over the couple's real property. The court retained jurisdiction over the personal property.

Mr. Lonewolf then stipulated to the disposition of various items of personal

property including numerous items identified as community property. Pursuant to this stipulation Mr. Lonewolf identified personal property valued at over $280,000 as community property. Mr. Lonewolf also agreed to the distribution of this property. The stipulation provided that each party had the active advice of counsel and opportunity to make full inquiry into the community property of the parties.

The parties did not agree to the distribution of certain pieces of pottery. After a hearing, the district court determined that Mr. Lonewolf owed Mrs. Lonewolf $18,309. This amount represented one-half the value of the pottery less various deductions in Mr. Lonewolf's favor.

After entry of judgment a writ of garnishment was executed against Mr. Lonewolf and the Valley National Bank,

which is not located on Santa Clara Pueblo, to garnish Mr. Lonewolf's account for the amount of the judgment. Mr. Lonewolf then stipulated to dissolve the writ and to deposit $20,139.90 with the district court.

On appeal the New Mexico Supreme Court affirmed the trial court's judgment.

II.

ARGUMENT

A. This Court Does Not Have Appellate Jurisdiction Over This Case.

The appellate jurisdiction of this Court depends upon the validity of a federal or state statute being drawn in question. This Court has no appellate jurisdiction unless the appellant presented to the state court the federal question raised in this Court. Cardinale v. Louisiana, 349 U.S. 437, 438 (1969).

On appeal to this Court the appellant asserts that various New Mexico statutes conflict with federal legislation governing Indian jurisdiction. On appeal to the state supreme court the appellant did not even cite the state statutes which he now urges are invalid.

Appellant's sole statutory argument in the state supreme court was that the trial court's decision essentially found him to have committed a crime, taking the missing pottery. Appellant further argued the state court had no jurisdiction because his asserted crime was committed on Indian country. Under 18 USC §§ 1151-1153 (1976 & Supp. V 1981) and 25 U.S.C. § 1321 (1976), state courts have no criminal jurisdiction over crimes committed on Indian lands. Appellant abandons this question before this Court, and he raises new statutory arguments never presented below.

At most, ancillary to his criminal conduct argument, the appellant below argued that exercise of jurisdiction over personal property infringed on rights of Indians to self-government. Because appellant chose to raise his issue in this manner, the decision below amounts to a denial of his asserted federal rights and not a validation of state statutes or an invalidation of federal statutes. Mergenthaler Linotype Co. v. Davis, 251 U.S. 256 (1920). Therefore, an appeal does not lie from the decision below.

For these reasons, the appeal should be dismissed.

B. There Is No Substantial Federal Question Presented By The Facts Of This Case.

Appellant's jurisdictional statement repeatedly emphasizes the exclusive jurisdiction of tribes over family relationships and marriage. The appellant

fails to explain how the issue relates to his case. Appellant himself asked for the divorce. Throughout the state court proceedings the appellant conceded the jurisdiction of the state court to dissolve the marital relationship. Thus, whatever the abstract validity of appellant's references to the importance of marriage and family to Indian self-government, appellant may not urge this ground as a basis for invalidating the decision below.

Appellant also urges that application of New Mexico community property principles infringes the authority of Santa Clara Pueblo to make their own laws and be governed by them. New Mexico law requires that a person challenging jurisdiction bear the burden of proving the lack of jurisdiction. State v. Cutnose, 87 N.M. 307, 532 P.2d 896 (Ct. App. 1974). Under this rule Mr.

Lonewolf was required to show that application of community property principles to personal property would infringe on or conflict with Santa Clara law. Tenorio v. Tenorio, 44 N.M. 89, 98 P.2d 838 (1940). Mr. Lonewolf failed to make any showing of how Santa Clara law treated marital personal property or that application of community property laws would conflict with Santa Clara law. In fact, during argument appellant's counsel conceded that he did not know what was Santa Clara's law on marital property. For this reason, as a matter of state procedural law the decision below was correct.

Appellant would have this Court believe that the decision below involved awarding Mrs. Lonewolf ownership of property located on pueblo lands. The facts belie this argument. At no point did the district court award Mrs. Lonewolf

ownership of property located on pueblo lands. The district court awarded a money judgment to Mrs. Lonewolf which represented half the value of property which had previously been on pueblo lands. The money judgment, moreover, could be satisfied by monies held in a bank located off the pueblo.

As a matter of jurisdiction, when a court has jurisdiction over a divorce and personal jurisdiction over the parties, the court may divide personal property even if the personal property is located outside the boundaries of the state. The situs of personal property is the domicile of the owner. Campbell v. Campbell, 586 S.W.2d 162 (Tex. Civ. App. 1979), withdrawn as moot, 613 S.W.2d 236 (1980). Mrs. Lonewolf's domicile when the district judge determined her ownership interests was New Mexico, not Santa Clara Pueblo.

The interest adjudicated below was not the ownership of particular items of property located on the reservation. The interest adjudicated was Mrs. Lonewolf's personal property right to retain the value of property and that value was represented by monies held by appellant outside the pueblo lands.

Appellant offers no basis for distinguishing between the property distributed under a court order which incorporated the parties' stipulation and the property about which appellant now complains. From the record there appears no basis for appellant's choice to concede jurisdiction for some items of community personalty but to contest it as to the value of other items of property with identical characteristics. New Mexico has long recognized the rights of

Indians to avail themselves of state courts to adjudicate rights against non-Indians. Trujillo v. Prince, 42 N.M. 337, 78 P.2d 145 (1938); Paiz v. Hughes, 76 N.M. 562, 417 P.2d 51 (1966). Mr. Lonewolf took advantage of this right to obtain the divorce he requested. Mr. Lonewolf stipulated to the power of the court to divide certain items of personal property identified as community property. In view of Mr. Lonewolf's willingness to use the state court to end his marital relationship and to distribute some community personal property, Mr. Lonewolf should not be allowed to contest the jurisdiction to award the value of other personal property to Mrs. Lonewolf.

CONCLUSION

The questions presented by appellant in this Court were never presented to the state supreme court. Consequently

this Court does not have appellate jurisdiction in this case. Moreover, the questions presented when viewed in light of the facts of this case are so insubstantial as not to need further argument, and the appeal should be dismissed. Alternatively, the judgment of the New Mexico Supreme Court should be affirmed. Additionally, appellee should be awarded her attorney fees, recoverable under state law, and costs, if any, pursuant to Supreme Court Rule 50 and 28 U.S.C. § 2103 (1976).

Respectfully submitted,

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No. 82-1564

In the Supreme Court of the United States

OCTOBER TERM, 1983

JOSEPH LONEWOLF, APPELLANT

v.

THERESA REY LONEWOLF

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether this Court has jurisdiction over the appeal in this case under 28 U.S.C. 1257(2).

2. Whether, in a divorce proceeding involving an Indian spouse and a non-Indian spouse whose marital domicile was on the Santa Clara Pueblo, the New Mexico state court had jurisdiction to award to the non-Indian spouse a share of the value of property created by the Indian spouse and located on the Pueblo.

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In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 82-1564

JOSEPH LONEWOLF, APPELLANT

v.

THERESA REY LONEWOLF

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This Brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

Joseph Lonewolf and Theresa Lonewolf, appellant and appellee respectively, were married in 1951 in the State of New Mexico pursuant to a state marriage license (J.S. App. 39; Mot. to Dis. or Aff. 1-2). For approximately 20 years, the Lonewolfs lived on non-Pueblo lands, but in 1972 they moved to the Santa Clara Pueblo and lived in a house on land owned by the Pueblo and assigned to appellant (J.S. App. 30; Mot. to Dis. or Aff. 2). Appellant is an Indian and is an enrolled member of the Santa Clara Pueblo, but Mrs. Lonewolf is a non-Indian and is not a member of the Pueblo. The couple's three children, all of whom are over the age of 21, are enrolled members of the Pueblo (J.S. 11, 14; J.S. App. 40).

The Lonewolfs separated on or about February 11, 1979 (J.S. App. 39, 42). Mrs. Lonewolf thereafter filed a petition for legal separation in the District Court for

the First Judicial District of the County of Rio Arriba, New Mexico, on March 26, 1979 (*id.* at 39-43). She sought, *inter alia*, interim relief prohibiting appellant from disposing of community property and an order requiring appellant to show cause why she should not have possession of a vehicle and the house on the Pueblo and why a temporary order restraining appellant from disposing of property should not be made final (*id.* at 42). In his April 2, 1979 response to the order to show cause, appellant asserted that the state court lacked jurisdiction over the dwelling and other property located on the Pueblo (*id.* at 44).

On April 27, 1979, appellant filed an answer to the petition for separation and counterclaimed for divorce (J.S. App. 46-51). In his answer, appellant noted that the request for relief pendente lite had been rendered moot by an agreement between the parties (*id.* at 46). In his accompanying counterclaim for divorce, appellant contended that the state district court had jurisdiction to grant the parties a divorce because of Mrs. Lonewolf's residence (*id.* at 49),[1] but he again maintained that all property acquired by the parties during the marital relationship was subject to the jurisdiction of the Pueblo of Santa Clara, not the state court. He therefore requested the state court to determine that the Santa Clara Tribal Court had jurisdiction over all matters pertaining to the couple's property (*id.* at 49). Appellant also requested "an equitable division of the community debts" and "such other and further relief as to the Court may seem proper" (*ibid.*). The court entered an order dissolving the marriage on December 13, 1979 (*id.* at 30). Mrs. Lonewolf asserts that she moved off the Pueblo at some point after the separation (Mot. to Dis. or Aff. 2), but she does not identify precisely when she did so. Mrs.

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[1] The relevant New Mexico statute confers jurisdiction on the state district court to grant a divorce when either party has resided in New Mexico for at least six months and has a domicile in the state. N.M. Stat. Ann. § 40-4-5 (1978) (see J.S. App. 52).

Lonewolf did testify, however, that the couple's marital domicile was on the Pueblo until the time of the divorce in December 1979 (May 7, 1981 Tr. 65).

The district court held that it had no jurisdiction over lands located on the Santa Clara Pueblo[2] but that it did have jurisdiction over the parties' personal property, whether located on or off the Pueblo (J.S. App. 35). The parties then entered into a stipulation providing for the distribution of most of the couple's personal property and debts, and the court approved that stipulation (*id.* at 31, 32, 36). The parties could not agree, however, on the division of certain items of Indian pottery made by appellant, a potter with a studio and gallery on the Pueblo. After a hearing regarding the pottery, the whereabouts of which were unknown, the court valued it in excess of $56,000 and ordered appellant to pay Mrs. Lonewolf $18,309, representing one-half of the value of the pots less certain deductions in appellant's favor. After entry of judgment, a writ of garnishment was executed against appellant's account in a bank located off the Pueblo to satisfy this amount, but the writ was dissolved after appellant deposited the required amount with the state court (J.S. App. 22; Mot. to Dis. or Aff. 3).[3]

Appellant appealed to the Supreme Court of New Mexico from that portion of the trial court's judgment regarding the pottery, and the Supreme Court of New Mexico affirmed (J.S. App. 20-26). The court reasoned that rights to personal property were not tied to lands

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[2] The court found that at the time of separation and for several years prior thereto, the parties occupied a dwelling located on the Santa Clara Pueblo and leased under an agreement between appellant and the All Indian Housing Authority. The court further found that Mrs. Lonewolf, as a non-Indian, could have no rights to lands located on the Pueblo and that such lands are not subject to alienation and may be passed on only to other members of the Pueblo (J.S. App. 30-31).

[3] See also Appellant's Brief in Chief in the Supreme Court of New Mexico at 2; Appellee's Answer Brief in the Supreme Court of New Mexico at 4-6.

within the Pueblo and that Mrs. Lonewolf's right under New Mexico law to control and dispose of community property (see N.M. Stat. Ann. § 40-3-14 (1978)) traveled with her off the Pueblo (J.S. App. 24). In the Supreme Court's view, once the district court had jurisdiction to dissolve the marriage, it had jurisdiction to determine the proper distribution of the couple's community property (*id.* at 24-25). The Supreme Court further held that appellant had submitted to the state court's jurisdiction when he filed his counterclaim for divorce and when he entered into a stipulation for the distribution of personal property other than the pottery and that he could not subsequently deny jurisdiction specifically as to the pottery (*id.* at 25).

DISCUSSION

We agree with appellee that an appeal does not lie to this Court under 28 U.S.C. 1257(2) from the decision of the Supreme Court of New Mexico because the validity of a state statute was not drawn in question in the courts below. If the Court agrees and therefore treats the papers whereon the appeal is taken as a petition for a writ of certiorari, we submit that this case does not warrant plenary consideration because the precise circumstances of the case are both atypical and somewhat unclear and because the question of jurisdiction to order a division of property in a divorce involving an Indian and non-Indian spouse has not received extensive consideration by the state courts. That question is, however, somewhat related to the question presented in *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering, P.C.*, cert. granted, No. 82-629 (Apr. 25, 1983). In the latter case, the issue is whether a state court has jurisdiction over a civil action brought by an Indian Tribe against a non-Indian defendant concerning matters arising on an Indian reservation. The Court therefore may wish to hold the jurisdictional statement in this case pending a decision in *Three Affiliated Tribes*.

1. a. Under 28 U.S.C. 1257(2), this Court has appellate jurisdiction over a final judgment rendered by the highest court of a state "where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." An appeal lies under this Section whether the validity of the state statute was challenged on its face or as applied. *Dahnke-Walker Co.* v. *Bondurant*, 257 U.S. 282 (1921). On the other hand, this Court has certiorari jurisdiction under 28 U.S.C. 1257(3) to review the judgment of a state court where, *inter alia*, "any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

In construing these provisions, the Court consistently has distinguished between cases in which a state statute has been attacked as applied and those in which a party has resisted a particular exercise of state authority on the ground of a federal immunity without actually contesting the validity of a state statute. Only cases in the former category are within the Court's appellate jurisdiction under 28 U.S.C. 1257(2), even though the exercise of state power challenged in cases in the latter category may be authorized by a state statute.[4]

For example, in *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555 (1980), which involved the right of access of the public and the press to criminal trials, a

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[4] A related question of this Court's appellate jurisdiction under 28 U.S.C. 1254(2) over a judgment of a federal court of appeals where the validity of a state statute is involved is presented in *Silkwood* v. *Kerr-McGee Corp.*, No. 81-2159 (argued Oct. 4, 1983). We have argued in *Silkwood* that principles developed under 28 U.S.C. 1257(2) should be applied under 28 U.S.C. 1254(2) as well. See U.S. Br. as Amicus Curiae at 2-10. The Court therefore may wish to hold the jurisdictional statement in this case pending the decision in *Silkwood*. The interpretation of 28 U.S.C. 1254(2) in this regard also is involved in *Besadny* v. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians*, appeal pending, No. 83-6.

state statute provided that the trial court, in its discretion, could exclude from a trial any persons whose presence would impair the conduct of a fair trial if the right of the accused to a public trial was not violated. 448 U.S. at 560 n.2. The Court nevertheless held that jurisdiction by appeal did not lie under 28 U.S.C. 1257(2), explaining (448 U.S. at 562-563 n.4):

> "It is essential to our jurisdiction on appeal • • • that there be an explicit and timely insistence in the state courts that a state statute, as applied, is repugnant to the federal Constitution, treaties or laws." *Charleston Federal Savings & Loan Assn.* v. *Alderson*, 324 U.S. 182, 185 (1945). Appellants never explicitly challenged the statute's validity. In both the trial court and the State Supreme Court, appellants argued that constitutional rights of the public and the press prevented the court from closing a trial without first giving notice and an opportunity for a hearing to the public and the press and exhausting every alternative means of protecting the defendant's right to a fair trial. Given appellants' failure explicitly to challenge the statute, we view these arguments as constituting claims of rights under the Constitution, which rights are said to limit the exercise of the discretion conferred by the statute on the trial court.

The Court also has dismissed appeals where a party has alleged that the federal Constitution prevents the exercise of jurisdiction by a state court but where the party has not explicitly challenged the validity of the state statute authorizing the assertion of that jurisdiction. See *Kulko* v. *California Superior Court*, 436 U.S. 84, 90 n.4 (1978); *Hanson* v. *Denckla*, 357 U.S. 235, 244 n.4 (1958).[8]

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[8] The Court has taken a similar view where a party has asserted a federal immunity to state taxing power. *Rohr Aircraft Corp.* v. *San Diego County*, 362 U.S. 628, 629-630 (1960); *Wilson* v. *Cook*, 327 U.S. 474, 480-482 (1946); *Charleston Federal Savings & Loan Ass'n* v. *Alderson*, 324 U.S. 182, 185-187 (1945); *Memphis Natural*

We do not doubt that appellant properly could have framed his contentions in the state courts as an attack on the validity, as applied to personal property located on the Pueblo, of the New Mexico statutes authorizing a court entertaining an action for dissolution of marriage to divide the spouses' property. Cf. *McCarty* v. *McCarty*, 453 U.S. 210, 219-220 n.12 (1981). Indeed, this Court, often without discussion, has entertained appeals from state courts in cases involving the application to Indians of a state law that was said to conflict with federal law or infringe upon the federally protected sovereignty of the Tribe.[6] But, as we explain below, appellant did not frame his argument in state court as an attack on the relevant state statutes, and that is critical to the existence of appellate jurisdiction. The Court has made clear that jurisdiction under 28 U.S.C. 1257(2) often depends upon the manner in which the parties have

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Gas Co. v. *Beeler*, 315 U.S. 649, 650-651 (1942); *Citizens National Bank* v. *Durr*, 257 U.S. 99, 106 (1921). See also *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434, 440-441 (1979). In a number of more recent cases, the Court has not discussed the jurisdictional issue involved here in entertaining appeals from state courts under 28 U.S.C. 1257(2) to consider the validity of a state tax as applied to certain income or property. See, *e.g.*, *ASARCO, Inc.* v. *Idaho State Tax Comm'n*, No. 80-2015 (June 29, 1982); *F. W. Woolworth Co.* v. *Taxation & Revenue Dep't*, No. 80-1745 (June 29, 1982); *Xerox Corp.* v. *County of Harris*, No. 81-1489 (Dec. 13, 1982); *Memphis Bank & Trust Co.* v. *Garner*, No. 81-1613 (Jan. 24, 1983); *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, No. 81-1839 (Mar. 29, 1983); *Container Corp.* v. *Franchise Tax Board*, No. 81-523 (June 27, 1983).

[6] See, *e.g.*, *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue*, No. 80-2162 (July 2, 1982), slip op. 4; *Central Machinery Co.* v. *Arizona State Tax Comm'n*, 448 U.S. 160, 163 (1980); *United States* v. *John*, 437 U.S. 634, 637-638 (1978); *Antoine* v. *Washington*, 420 U.S. 194, 197 (1975); *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164, 165 (1973); *Warren Trading Post* v. *Arizona Tax Comm'n*, 380 U.S. 685, 686 n.1 (1965).

structured their arguments. See *Memphis Natural Gas Co.* v. *Beeler*, 315 U.S. 649, 650-651 (1942).[7]

b. In his formal pleadings in the state trial court, appellant contended that the court had no "jurisdiction" over property located on the Santa Clara Pueblo, but he did not cite any particular state statute or seek a declaration that any such statute is invalid on the ground of its repugnancy to federal law or the Constitution (J.S. App. 44, 46, 49).[8] The trial court concluded that it did "have jurisdiction over the personal property which is the community property of the parties, whether the same is located on or off the reservation" (J.S. App. 35), but the court likewise did not cite a specific statute or indicate that it was sustaining a statute against a challenge to its validity under federal law.

Moreover, as appellee notes (Mot. to Dis. or Aff. 5), in his briefs in the Supreme Court of New Mexico, appellant again did not cite any state statute or contend that any such statute is invalid. His argument essentially was that the exercise of jurisdiction by the trial court was inconsistent with federal law and infringed upon the right of the Indians to make their own laws. Appellant's Brief in Chief at 3-8, 14; Appellant's Reply Brief at 1-5, 9-12. Especially in light of appellant's failure even to cite a state statute, we believe this argument should be understood as an assertion that federal law or the federally protected sovereignty of the Tribe conferred an immunity from the exercise of jurisdiction by the state court, rather than an attack on the validity of

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[7] See also 12 Moore, Bendix & Ringle, *Moore's Federal Practice* ¶ 513.01, at 8-80 to 8-81 (2d ed. 1982); 16 C. Wright, A. Miller, E. Cooper & E. Gressman, *Federal Practice and Procedure* § 4012, at 616, 617-618 (1977); P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *The Federal Courts and the Federal System* 637-640 (2d ed. 1973); Stern & Gressman, *Supreme Court Practice* 163-165 (5th ed. 1978).

[8] Compare U.S. Mot. to Dis. in Part and Aff. in Part at 10, *Bessdny* v. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians* (No. 83-6, 1983 Term) (28 U.S.C. 1254(2)).

the state statutes that confer jurisdicion on the court and empower it to divide property.

The opinion of the Supreme Court of New Mexico supports this conclusion. The Supreme Court stated that the issue on appeal was whether "the New Mexico district court had jurisdiction to determine the disposition of community personal property located on the Santa Clara Reservation when one of the parties is an enrolled member of the Pueblo of Santa Clara" (J.S. App. 21), and the Court stated that the test "for exercise of state court jurisdiction" over matters involving Indian Tribes is "whether the state infringed on the right of reservation Indians to make their own laws and be ruled by them" (*id.* at 22-23, quoting *Williams* v. *Lee*, 358 U.S. 217, 220 (1959)). There was no reference to state statutes in this portion of the opinion. These statements therefore suggest that the Supreme Court likewise viewed the issues presented not in terms of the validity of the statutes as such, but rather in terms of whether the trial court's exercise of its jurisdiction infringed upon a federally protected right or immunity. The case therefore resembles *Richmond Newspapers, Inc.* v. *Virginia*, *Kulko* v. *California Superior Court*, and *Hanson* v. *Denckla*, *supra*, in which this Court held that an appeal did not lie under 28 U.S.C. 1257(2).[9] The appeal accordingly should be dismissed for lack of jurisdiction.[10]

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[9] To be sure, the Supreme Court of New Mexico did cite several state statutes elsewhere in its opinion, noting that "Mrs. Lonewolf properly invoked the jurisdiction of the district court for dissolution of the marriage, Section 40-4-5, N.M.S.A., and for division of the property, Section 40-4-7, N.M.S.A. 1978" (J.S. App. 24). This statement, however, appears to be nothing more than a description of Mrs. Lonewolf's invocation of state procedures, rather than an indication that the validity of the cited state statutes was at issue.

[10] We do not agree with appellee (Mot. to Dis. or Aff. 5) that appellant did not sufficiently raise in state court the question whether the assertion of jurisdiction over the pottery would infringe upon the right of the Indians to make their own laws and be governed by them. It is true that the principal theme of appel-

2. It is our view that the Supreme Court of New Mexico erred in holding that, in the absence of the assumption by New Mexico of jurisdiction pursuant to Public Law 280,[11] the state trial court had jurisdiction

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lant's argument in the Supreme Court of New Mexico was that the district court effectively determined who "stole" the missing pots when it awarded Mrs. Lonewolf one-half of their value (less certain deductions) and that the court therefore in substance improperly exercised criminal jurisdiction over an on-reservation offense involving an Indian. See Appellant's Brief in Chief at 3-5, 9-13. But appellant also argued that the exercise of jurisdiction by the state court interfered with tribal self-government under *Williams* v. *Lee* (Appellant's Brief in Chief at 6-9; Reply Brief at 3-5, 9-11), and the Supreme Court of New Mexico addressed appellant's arguments in those terms (J.S. App. 22-25). This was sufficient to permit the exercise of jurisdiction under 28 U.S.C. 1257. See *Illinois* v. *Gates*, No. 81-430 (June 8, 1983), slip op. 2-8.

Appellant also identifies (J.S. 2) as a separate question presented the question whether New Mexico's application of its community property laws to determine the character and nature of personal property created and held on the Pueblo impermissibly infringed on the power of the Indians to make their own laws and be governed by them. This precise issue was not separately addressed in the courts below. Nevertheless, in the circumstances of this case, we believe that the propriety of the application of the state's community property laws is fairly subsumed in the broader issue of the state's exercise of "jurisdiction" over the property and that consideration of this issue therefore would be appropriate as well if the Court were to grant review in this case.

[11] Act of Aug. 15, 1953, ch. 505, 67 Stat. 588. Although Public Law 280 permits a state to assume jurisdiction over divorces involving Indians (see *Bryan* v. *Itasca County*, 426 U.S. 373, 384 n.10 (1976)), New Mexico has not acquired civil jurisdiction under Public Law 280. *Chino* v. *Chino*, 90 N.M. 203, 206, 561 P.2d 476, 479 (1977). This factor distinguishes the decision in *Sheppard* v. *Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982), the only other decision we have located that arose out of similar facts. There, the Idaho Supreme Court held that the state trial court, in a divorce proceeding brought by a non-Indian spouse against an Indian spouse, had jurisdiction to order a division of the couple's property located on the reservation and to order the Indian spouse to reimburse the non-Indian spouse for the latter's share of the community property used to purchase a trust asset. However, the Idaho Supreme Court relied on the enactment of Public Law 280 for the assertion of jurisdiction in the case. 655 P.2d at 906-908. See also *Fisher* v.

in this divorce proceeding to award Mrs. Lonewolf a share of the value of the pottery made by appellant on the Pueblo. However, treating the papers whereon the appeal is taken as a petition for a writ of certiorari, we do not believe the case merits plenary review.

a. Although the circumstances of the controversy make it difficult to fit this case precisely within established principles governing the exercise by a State of jurisdiction over Indians and reservation matters, it nevertheless is useful to reiterate those principles at the outset and to identify the relative interests of the Tribe and and the State.

It is, of course, well settled that an Indian Tribe, as an inherent attribute of its sovereignty, has exclusive jurisdiction over matters relating to the domestic relations of its members, at least insofar as concerns conduct on the reservation. See, *e.g.*, *Montana* v. *United States*, 450 U.S. 544, 564 (1981); *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 55-56 (1978); *United States* v. *Wheeler*, 435 U.S. 313, 322 n.18 (1978); *Fisher* v. *District Court*, 424 U.S. 382, 386-389 (1976); *United States* v. *Quiver*, 241 U.S. 602 (1916). Cf. *New Mexico* v. *Mescalero Apache Tribe*, No. 82-331 (June 13, 1983), slip op. 8-9; *DeCoteau* v. *District County Court*, 420 U.S. 425, 428-430 & n.3 (1975). This view is reflected in the Indian Child Welfare Act of 1978, 25 U.S.C. (Supp. V) 1901 *et seq.*, which provides that an Indian Tribe shall have exclusive jurisdiction over custody proceedings involving an Indian child domiciled or residing on the reservation, except where jurisdiction is otherwise vested in the State by existing federal law. 25 U.S.C. (Supp. V) 1911(a).[12] Consistent with these principles, there would

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Fisher, 104 Idaho 68, 656 P.2d 129 (1982) (similar case in which both spouses were Indians). The decision in *Sheppard* v. *Sheppard* therefore does not suggest that a state court would have such jurisdiction even in the absence of Public Law 280, as the New Mexico Supreme Court held here.

[12] The authority of an Indian Tribe in the area of domestic relations is closely related to the long-recognized power of a Tribe

seem to be little doubt that an Indian Tribe retains inherent jurisdiction over the dissolution of a marriage between two of its members who are domiciled on the reservation and over the division and distribution of the spouses' property in connection with that dissolution, at least insofar as that property is situated on the reservation. See, *e.g.*, *Conroy* v. *Conroy*, 575 F.2d 175 (8th Cir. 1978); *Marris* v. *Sockey*, 170 F.2d 599 (10th Cir. 1948), cert. denied, 336 U.S. 914 (1949); *Yakima Joe* v. *To-Is-Lap*, 191 F. 516 (D. Or. 1910); *Raymond* v. *Raymond*, 83 F. 721 (8th Cir. 1897); F. Cohen, *Handbook of Federal Indian Law* 120, 137-139 (1942); cf. *Begay* v. *Miller*, 70 Ariz. 380, 222 P.2d 624 (1950); *In re Red Fox & Red Fox*, 23 Or. App. 393, 399, 542 P.2d 918, 921 (1975). See also 25 C.F.R. 11.28(a).

However, just as a Tribe has a compelling interest in the regulation of the domestic relations of its members who reside on the reservation, so too this Court has recognized that a State has a paramount interest in the domestic relations of a husband and wife within its borders. See, *e.g.*, *Ridgway* v. *Ridgway*, 454 U.S. 46, 54-55 (1981); *McCarty* v. *McCarty*, 453 U.S. 210, 220 (1981); *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581 (1979); *Williams* v. *North Carolina*, 317 U.S. 287, 298-299 (1942); *In re Burrus*, 136 U.S. 586, 593-594 (1890). As a result, we believe that a state ordinarily would have exclusive jurisdiction over the domestic relations of two non-Indian spouses, even if they reside on an Indian reservation and even with respect to the spouses' real or personal property situated on the reservation. Cf. *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164, 168 (1973); *Williams* v. *Lee*, 358 U.S. at 220; *United States* v. *McBratney*, 104 U.S. 621 (1881).

This case, of course, does not fit into either of the categories just discussed, because it involves the dissolu-

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to establish rules regarding membership and to govern the inheritance of property. See *Montana* v. *United States*, 450 U.S. at 564; *United States* v. *Wheeler*, 435 U.S. at 322 n.18; *Santa Clara Pueblo* v. *Martinez*, 436 U.S. at 55.

tion of a marriage between an Indian and a non-Indian who is not a member of the Tribe.[13] In such a case, where the spouses were domiciled on an Indian reservation within the State, the interests of both the Tribe and the State are implicated (*McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. at 179), especially if the non-Indian spouse resides off the Indian reservation.[14] This Court has formulated principles in other settings for the resolution of disputes involving Indians and non-Indians in connection with matters arising on an Indian reservation, and those decisions furnish some guidance for resolving the jurisdictional issue here as well.

In its seminal decision in *Williams* v. *Lee*, 358 U.S. 217 (1959), the Court held that an Arizona state court did not have jurisdiction over a suit brought by the non-Indian owner of a store on the Navajo Indian Reservation against a Navajo Indian and his wife to collect the amount owed for goods sold to them on credit. The suit instead had to be brought in the tribal court, which had been granted jurisdiction over suits by outsiders against Indian defendants. 358 U.S. at 222. The Court concluded that the exercise of jurisdiction by the state court in these circumstances "would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." *Id.* at 223. See also *Kennerly* v. *District Court*, 400 U.S. 423 (1971); *Fisher* v. *District Court*, 424 U.S. at 386. But while such suits against Indians in state court are barred, this Court has made

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[13] Mrs. Lonewolf did not (and could not) become a member of the Santa Clara Pueblo after her marriage to appellant. See *Santa Clara Pueblo* v. *Martinez*, 436 U.S. at 52 & n.2. As a result, there is no occasion here to consider whether a Tribe would have exclusive jurisdiction over the divorce of an Indian and a non-Indian who is a member of the Tribe. See 19 Op. Att'y Gen. 109 (1888); cf. *Nofire* v. *United States*, 164 U.S. 657 (1897).

[14] As noted above (see page 2, *supra*), Mrs. Lonewolf apparently moved off the Pueblo at some point after she and appellant separated, but it is not clear when she did so.

clear that suits by Indians against non-Indians in state court concerning matters arising on an Indian reservation do not impermissibly interfere with the right of the Indians to make their own laws and be governed by them. See *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. at 171, 173; *Williams* v. *Lee*, 358 U.S. at 219-220. See also *Felix* v. *Patrick*, 145 U.S. 317, 332 (1892); *United States* v. *Candelaria*, 271 U.S. 432, 444 (1926). See generally U.S. Br. at 6-15, *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering, P.C.* (No. 82-629, 1983 Term).

If these principles were to be applied rigidly in the domestic relations setting, the result would be that a state court would be wholly barred by federal law from entertaining an action for divorce (or, as here, for legal separation) brought by a non-Indian against an Indian if the marital domicile was on the reservation. We do not believe, however, that the holding in *Williams* v. *Lee* requires a complete bar to the exercise by a state court of jurisdiction in these circumstances. Rather, as we explain below, drawing on principles of a "divisible" divorce developed in this Court's cases regarding the interstate aspects of divorce, it is our view that a state court has the authority to affect the marital status of the non-Indian spouse by dissolving the marriage, but does not have jurisdiction to order a division of the property.

b. In *Williams* v. *North Carolina*, *supra*, the Court held that "each state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent." 317 U.S. at 298-299. This is so even though the marital domicile of the couple was in another State, and such a decree must be given full faith and credit in the State of marital domicile. *Id.* at 298-304, overruling *Haddock* v. *Haddock*, 201 U.S. 562 (1906). By analogy, in the area of state and tribal jurisdiction over domestic relations, a state court could

grant a divorce to the non-Indian spouse even if the court would not ordinarily have jurisdiction over actions brought against an Indian residing on the reservation in connection with matters arising on the reservation.

This result is perhaps clearest where the non-Indian spouse moved off the reservation and abandoned his or her domicile there before suing for divorce, for then the parallel to the situation of a spouse moving to another State would be complete. But we believe that the state court could grant a divorce to the non-Indian spouse even if he or she continued to reside on the reservation. This Court has stressed that, absent a governing federal statute, whether a State may exercise jurisdiction over activities of a non-Indian on a reservation requires a particularized inquiry into the relative interests at stake. See, *e.g.*, *New Mexico* v. *Mescalero Apache Tribe*, slip op. 9-11; *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue*, slip op. 4-7, 13-14; *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136, 144-145 (1980). The interest of a State in the marital status of the non-Indian spouse in these circumstances (see *Williams* v. *North Carolina*, 317 U.S. at 298-299) would appear to be sufficient to permit the state court to alter that status, even though the Tribe, too, has an important interest in the marital relationship by virtue of its authority over the Indian spouse and the fact that the couple's marital domicile was on the reservation (cf. *id.* at 302-304).

It does not follow, however, that a state court also has jurisdiction to order a division of property in these circumstances—at least where, as here, the property is situated on the reservation. In *Estin* v. *Estin*, 334 U.S. 541, 546-549 (1948), the Court held that a state court in Nevada, in granting a divorce to a husband who became domiciled there in proceedings against a wife who was not served and did not appear, could not affect the property rights of the absent spouse under a decree of separation and alimony in New York. The result, the

Court observed, "is to make the divorce divisible" and thereby "accommodate[] the interests of both Nevada and New York in this broken marriage by restricting each State to the matters of her dominant concern." *Id.* at 549. See also *Vanderbilt* v. *Vanderbilt*, 354 U.S. 416 (1957). In our view, the same principle governs here.

To be sure, in a divorce action by a non-Indian spouse against an Indian spouse, the question as regards the power of the state court to order a division of property is not whether the court has personal jurisdiction over the absent spouse, but whether the court has subject matter jurisdiction over the action, insofar as the non-Indian seeks a division of property, in light of the Indian status of the other spouse. The policy considerations, however, are quite similar, for where the marital domicile was on the reservation and the property is located there, the Tribe, not the State, would appear to have the "dominant concern" [15] in the disposition of the property. Accordingly, drawing by analogy on *Estin* v. *Estin* and *Vanderbilt* v. *Vanderbilt*, in a divorce proceeding filed by a non-Indian against an Indian where the couple had been domiciled on the reservation, the state court cannot order a division of property situated on the reservation [16]—at least where, as here, the tribal court would have jurisdiction to order a division of that property.[17]

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[15] *Estin* v. *Estin*, 334 U.S. at 549.

[16] Because the only property remaining in issue in this case (the pottery) concededly was created and located on the Pueblo, there is no occasion to consider whether a state court could order the division of property located off the reservation if the property was closely related to the couple's marriage and domicile on the reservation or the Indian spouse's activities there. Cf. *Morton* v. *Ruiz*, 415 U.S. 199 (1974).

[17] The then-Governor of the Santa Clara Pueblo testified that the tribal court would have jurisdiction in a case such as this, but that the Pueblo ordinarily would honor a request that the dispute be submitted to state court (Tr. 40-41, 46-47; see also 25 C.F.R. 11.22).

This conclusion is strongly supported by *Williams* v. *Lee*, in which the Court held that an action by a non-Indian against an Indian to collect on a debt arising out of matters on the reservation could not be brought in state court but instead had to be brought in tribal court.

c. If the foregoing principles are applied to the instant case, it is clear that the state court had jurisdiction over Mrs. Lonewolf's petition for legal separation from Mr. Lonewolf [18] but not over her accompanying request for division of the couple's community property located on the Pueblo. This case is made somewhat more complicated, however, by the fact that appellant counterclaimed for divorce (J.S. App. 48). The Supreme Court of New Mexico held that as a result of this counterclaim, appellant had "submitted to the district court's jurisdiction" and "cannot now deny jurisdiction specifically as to the pottery" (*id.* at 25).[19] This conclusion was erroneous.

As an initial matter, the question is not whether personal jurisdiction over appellant could be obtained by his "submitting" to the court's jurisdiction; the question is whether the trial court had subject matter jurisdiction to award Mrs. Lonewolf a share of the value of the pottery in view of appellant's status as an Indian. When appellant counterclaimed for divorce, he was essen-

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[18] If the state court could alter the marital relationship by dissolving the marriage, we do not believe the court would be foreclosed from granting a formal separation, to the extent this simply altered the status of the parties. It is not clear, however, what independent significance such a decree would have under New Mexico law.

[19] The Supreme Court also held that appellant had submitted to the jurisdiction of the trial court by entering into a stipulation for the division of all items of personal property except the pottery (J.S. App. 25). It appears, however, that this stipulation was entered into only after the trial court held that it had jurisdiction over all personal property. Accordingly, appellant's entering into a stipulation regarding the property cannot be viewed as a voluntary submission to the trial court's jurisdiction with respect to that property.

tially in the position of an Indian plaintiff in a suit against a non-Indian defendant, and this Court long has recognized that such a suit is not inconsistent with the federally protected sovereignty of the Tribe. But in his counterclaim, appellant once again explicitly asserted that the trial court did not have jurisdiction over property on the Pueblo. In our view, the state trial court could not, consistent with *Williams* v. *Lee*, exercise jurisdiction over Mrs. Lonewolf's request that it award her a portion of on-reservation *property* in which appellant had an interest simply because appellant filed a limited and separate request that the trial court alter the couple's *status*. As explained above, this Court elsewhere has recognized that a divorce appropriately may be regarded as "divisible" into aspects relating to status and property in order to accommodate the interests of separate jurisdictions. New Mexico law reflects the same view: it recognizes that the dissolution of a marriage and the division of property are separate matters that need not be accomplished in the same proceedings. N.M. Stat. Ann. § 40-4-3 (1978) (division of property may be granted without dissolving the marriage); N.M. Stat. Ann. § 40-4-20 (1978) (division of property may be accomplished in a separate suit after dissolution of the marriage). These principles apply equally here to the separate interests of the Tribe and the State.[20]

In holding that the state trial court had jurisdiction, the New Mexico Supreme Court observed that rights to personal property were not tied to lands within the reservation and that Mrs. Lonewolf had a right under New Mexico law to control and dispose of the community prop-

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[20] Appellant did request a division of the couple's community debts even though he objected to jurisdiction over on-reservation property (J.S. App. 49), but the Supreme Court of New Mexico did not rely on this fact in finding that the state court had jurisdiction. In our view, the court properly could have declined to grant appellant relief with regard to the community debts or other relief beyond dissolution of the marriage if petitioner did not also request a division of community property.

erty (see N.M. Stat. Ann. § 40-3-14 (1978)) that traveled with her and therefore could be adjudicated in state court. This reasoning also is flawed. The Court too quickly assumed that New Mexico law would apply on the reservation to confer on Mrs. Lonewolf a right to control and dispose of the pottery. In our view, tribal, not state, law would govern the rights of an Indian and a non-Indian spouse domiciled on an Indian reservation in property located on the reservation—especially where, as here, a non-Indian spouse asserts an interest in property (the pottery) that concededly was created by the Indian spouse on the reservation. Thus, a reference to the source of the governing law supports a finding of tribal, not state, jurisdiction over the division of the property in question. In this connection, we note that under New Mexico law, as under the law of most community property jurisdictions, the rights of spouses domiciled in New Mexico to property acquired while the spouses were domiciled in another State are governed by the law of the other State. See *Brenholdt* v. *Brenholdt*, 94 N.M. 489, 612 P.2d 1300 (1980); *Hughes* v. *Hughes*, 91 N.M. 339, 573 P.2d 1194 (1978). There is no reason for a different result when the couple was domiciled on an Indian reservation.

3. Although it is our view that the Supreme Court of New Mexico erred in holding that the state trial court had jurisdiction to award Mrs. Lonewolf a share of the value of the pottery made by appellant, we do not believe that plenary review should be granted here. Insofar as we have been able to ascertain, the question of the extent of state court jurisdiction over a dissolution of the marriage between an Indian and non-Indian and accompanying division of property in the absence of an assumption of jurisdiction by the State under Public Law 280 has not been extensively considered by the state courts or given rise to conflicting decisions. See note 11, *supra*. Moreover, this case involves somewhat unusual circumstances, because it was the Indian who

sought a divorce in state court as well as certain additional relief.[21]

CONCLUSION

The appeal should be dismissed for lack of jurisdiction under 28 U.S.C. 1257(2). Treating the papers whereon the appeal is taken as a petition for a writ of certiorari, the petition should be held and disposed of in light of this Court's decision in *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering, P.C.*, No. 82-629. In the alternative, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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[21] In addition, on December 9, 1981, after this case was decided by the trial court, the Santa Clara Tribal Code was amended in several respects that, although somewhat unclear, might have an impact on similar cases in the future. For example, Title X, Section 23.2 of the new Code provides that the Tribal Court shall have jurisdiction over the marriage, divorce and related matters concerning members of the Santa Clara Pueblo and that a divorce obtained in another jurisdiction shall be of no force in the Pueblo if both parties were domiciled on the Pueblo at the time it was sought. It is unclear whether the latter provision is intended to apply where, as here, one of the parties to a marriage is a non-Indian. See also Title II, Section 22 (general jurisdictional provisions). We have lodged with the Clerk of this Court a copy of the provisions of the Tribal Code that were furnished to us by counsel for petitioner.

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